Avoiding Copyright Infringement: How to Conduct a Copyright Audit

A week rarely goes by without a phone call or email from a librarian or marketing executive asking me about the legality of reproducing print and electronic documents. Although the majority of inquiries come from those employed by corporations, more and more non-profits, especially association personnel, are seeking "safe" and cost-effective procedures for ensuring copyright compliance within their organizations.

Information professionals know the importance of developing copyright policies. Librarians tend to be the "watchdogs" and consciences of their organizations, distributing policies in employee manuals, posting cautionary statements on copying machines, and displaying terms and conditions on intranets and Web sites. Despite our best efforts, however, we have limited control over how our co-workers and clients ultimately choose to duplicate copyrighted materials.

I'd like to share with you guidelines for conducting an audit of an organization's copying practices. What follows is a process that I have found to be effective with my own clients.

**COMPILE LIST OF DUPLICATED MATERIALS**

In conducting an audit, the first step that an organization must take is to prepare a list of the titles and types of materials that are duplicated by employees. It is important to meet with every department within an organization, not only with managerial staff, but also with administrative assistants and other support staff who are often called upon to make and distribute copies of copyrighted works. Groups of five or six people at a time seem to be the most productive sessions, since workers share information by reminding each other of copying that is taking place.

Questions will vary, depending on the department being interviewed. Generally, you will be asking employees about the types of documents they copy for their personal use, internal use (copies forwarded to other employees), and external use (copies sent outside the organization). A suggested list of materials that you should inquire about includes:

1. Print materials available from the library/information center's collection (journal articles; book chapters; regional, state, and local government documents; market research reports; patents; white papers, etc.)
2. Storage of documents in company-owned computers and/or in electronic databases (text, HTML, PDF, and other digital format files)
3. Electronic search results—including strategies, citations, abstracts, and full-text documents—retrieved from commercial databases and free- or fee-based Web sites
4. Organizational publications, such as brochures, marketing materials, price lists, etc.
5. Documents distributed at seminars, workshops, and trade shows (organizational brochures and marketing materials, as well as external materials such as journal articles)
6. Materials distributed to public relations and advertising firms, to
reporters, to the general public, or to targeted audiences (such as physicians, researchers, etc.)

7. Advocacy materials distributed to governmental agencies and/or lobbying groups

8. Music played at annual meetings, fund-raising events, seminars, workshops, etc.

After discussions with employees, copy has been completed, photocopying of print materials and duplication of Web site documents should be monitored for two or three months. You can ask employees to send you second copies of all materials that they are duplicating, with a brief description of how many copies are being made and how they are being distributed. This process is a double-check on your employees, to make certain that they have not inadvertently omitted anything in the group discussions.

ACHIEVE COMPLIANCE OF PRINT MATERIALS

Once you have collected a list of documented photocopying activity, the challenge then is to establish whether or not your organization is at risk for copyright violations. You must first determine if the materials are protected by copyright, by checking mastheads in printed materials and looking at Web sites for copyright and permissions statements.

Although it may seem tedious to examine your library's journal holdings against titles registered with the Copyright Clearance Center (CCC), for small corporate and association libraries, this is an effective way to determine the percentage of your collection registered with the CCC. If the percentage is high enough, establishing an account and paying royalties through the CCC's Annual Authorizations Service (AAS) or Transactional Reporting Service (TRS) will allow employees in your organization to make unlimited copies of articles from your library collection.

For the remaining unregistered titles, at least four options are available to you:

1. Consider the purchase of additional subscriptions. The extra subscriptions can be used to tear out articles to distribute to employees (royalties will not have to be paid to the copyright holder) or to provide circulating journals, newspapers, market research reports, and other documents (at least one title subscription would not circulate so that your library's collection remains intact).

Consider stamping each item in your collection with a copyright warning, for example:

Copyright © 2000. All rights reserved. Printed in the United States of America. No part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without the prior written permission of the publisher.

2. Negotiate print and/or electronic licensing agreements directly with publishers and other rights-holders. For heavy-volume requests from specific titles, the publishers may be willing to negotiate direct agreements at cheaper royalty fees than if your organization paid the CCC.

3. Order items from large, commercial document delivery providers—such as CISTI, ISI's Document Solution, Information Express, The British Library, and UnCover—or boutique services that specialize in unique collections. These distributors include many titles not registered with the CCC, as the document suppliers have their own arrangements with publishers. Make certain that you check the credibility of the supplier, specifically asking about how royalties are paid to rightsholders.

Additional Policies and Guidelines Resources

Although most publicly-available copyright policies are composed by those employed in educational institutions, I believe that many of these documents can be adapted for corporations and associations. Web sites that may be especially useful to those of you who are in the process of establishing written copyright guidelines or are reviewing existing procedures include

American Association of Law Libraries (AALL)
AALL Guidelines on the Fair Use of Copyrighted Works by Law Libraries
http://www.aallnet.org/about/policy_fair.asp

Association of Research Libraries (ARL)
http://www.arl.org/scamm/copyright/principles.html

Copyright Clearance Center (CCC)
Guidelines for Creating a Policy for Copyright Compliance
http://www.copyright.com/News/Viewguidelines.html

Special Libraries Association (SLA)
Copyright Policy for Headquarters Staff
http://www.sla.org/membership/con/irc/copypol.html

University of Maryland
CopyOnW Policy. A Resource on Copyright Ownership for the Higher Education Community
http://www.inform.umd.edu/copyown/policies/index.html
A reputable document supplier will include royalty fees in its charges.

4. Furnish the full text of requested articles from commercial database sources. For example, The Dialog Corporation offers the Electronic Redistribution and Archive (ERA) service that allows multiple copies of individual articles to be sent to employees. Royalty fees are built into the online costs. The downside of this option is that not all required titles will be available in full text online, and charts and graphs are often missing from the online versions of articles.

GUARANTEE COMPLIANCE OF ELECTRONIC MATERIALS

Library staff are generally regarded as intermediaries or agents in providing online research services. Most print publishers and online services recognize that librarians, information professionals, sales people, marketing researchers, and consultants are often called upon to provide one-time projects or customized alerting services to third parties. The general rule is that each request from employees should be handled as a brand new request by the information center staff, even if the research duplicates a project from the past. In other words, each request should be researched as if it was a new, original project (i.e., the "one search, one user" rule). Generally, an archival copy of the project can be maintained by the library for a short amount of time in the event that the requesting employee does not receive the information, the file is corrupted, or there are questions that require the library staff to refer to the archival copy. A file of search strategies and the sources consulted to retrieve the information should be maintained as reference for future, similar research requests.

To ensure that search results are not in violation of copyright infringement, at least five approaches should be considered:

1. Conduct one search for one researcher at a time, i.e., do not duplicate the results of each search for several researchers. As mentioned earlier, an online search needs to go to more than one researcher, services such as Dialog’s ERA service can be used to pay royalties.

2. If current awareness services are provided to researchers, in which more than one copy is distributed, discuss licensing arrangements with the online services that will allow duplication of search results to more than one individual.

3. When downloading online search results, keep all copyright notices with each record. In other words, do not delete copyright notices when postprocessing search results.

4. Develop a cover sheet for each delivered search, outlining the employee's copyright responsibilities and warning about the risks of further duplicating the results. A boilerplate cover sheet might include the following:

The attached materials have been provided for your own personal use. Since these materials may be protected by the U.S. Copyright Act, the Berne Convention, and/or

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5. Forward Web site URLs to employees, rather than the site's content. As long as employees download or print just one copy for their own personal use, organizations should be relatively safe from copyright violations resulting from Internet searches.

CONSIDER SPECIAL COPYING NEEDS

Each organization will have to think about the special copying needs of its employees. At least two situations repeatedly come up in audits that I conduct for my clients that warrant attention here.

Salespeople find value in providing customers with reprints, but copyright violations may exist if copies are furnished without first seeking permission from publishers, paying royalties through a licensing agency such as the CCC, or using a document delivery service provider. In addition to stamping each article supplied to salespeople, the information center might hold periodic meetings to educate the marketing staff about what they can and cannot distribute. The educational meetings should include a permissions system that makes it easy for salespeople to comply with copyright laws, while at the same time, furnishing materials necessary to maintain good customer relations. Many publishers sell reprints in bulk quantity for reasonable fees. This is an option that has at least two benefits: reprints are better quality than photocopies, and copyright permissions have been cleared by the publishers.

Many information centers are charged with creating a virtual library or organizational intranet replete with substantial content. The resulting database may ultimately contain parts of copyrighted materials (citations and abstracts from print and electronic journals, books, market research, and technical reports; government documents and data; and Web-based information), as well as unique, proprietary information generated directly by the organization (for example, original abstracts written by library staff and original formatting of bibliographic information). An organization should be aware that it may be in copyright violation if existing, copyrighted database structures, formats, bibliographic information, indexing/classification/subject schemes, and/or abstracts are downloaded and stored intact.

While there have been no legal cases regarding copyright infringement of bibliographic citations (i.e., author, title, journal or book name, year, volume, issue, page numbers), some cases have been litigated over abstracts. Many publishers insist that abstracts are part of an item's content and are, therefore, protected by copyright laws. Also keep in mind that most database providers and online services do copyright each record in a database. Since the database producer and online service have "added value" by "creatively" compiling the record, arranging the record information for retrieval, and adding field names so individual parts of the record can be searched, the record becomes protected by copyright laws. Even if the record contains public domain information (such as federal government data, a patent, a legal case, or a directory listing), a judicious decision would be to write your own abstracts for each item pulled into the database and not use any existing database or publisher abstracts. Reformatting the bibliographic citations and adding uniquely-created subject/indexing categories (versus duplicating them from online sources) is a second safeguard.

ESTABLISH POLICIES AND PROCEDURES

Every organization should consider the writing of copyright guidelines to protect itself against legal action (for staff and member violations). Organizations will vary on the severity of "punishment" for employees who violate copyright laws. Some companies view copyright infringement as stealing, and will fire an employee on the first violation. Other companies will issue a warning before taking a more drastic measure. What is important is that you receive support from the top positions within your organization to establish procedures for advising employees and/or association members about copyright. These procedures should be part of employee handbooks or guidelines for employee behavior. Once written guidelines have been drafted and approved (consider having the organization's attorney view the guidelines before issuing them), then it is important to hold educational seminars to inform employees about the policies.

Some organizations form a copyright committee to monitor relevant legal cases and government initiatives to revise existing copyright laws. The committee might also be used to develop a system to review copyright permissions for existing and new print and electronic documents.

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Comments? Email letters to the Editor to editor@onlinemag.com.